

1 Stephen B. Morris (SBN 126192)  
2 **MORRIS and ASSOCIATES**  
3 444 West C Street, Suite 300  
4 San Diego, California 92101  
5 Telephone: (619) 239-1300  
6 Fax: (619) 234-3672

7 Attorney for Plaintiff

8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10  
11  
12 AMANDA RUDD for herself and All  
13 Others Similarly Situated,

14 Plaintiff,

15 vs.

16 BORDERS, INC. and DOES 1 through  
17 20, inclusive,

18 Defendants.

CASE NO. 3:09-cv-00832-BTM-NLS

**REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF  
PLAINTIFF'S OPPOSITION TO  
MOTION TO DISMISS**

Date: June 19, 2009  
Time: 11:00 a.m.  
Courtroom: 15  
Judge: Honorable Barry  
Ted Moskowitz

19  
20 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**  
21 **RECORD:**

22  
23 PLEASE TAKE NOTICE that Plaintiff AMANDA RUDD, will and hereby  
24 does request this Court, under Federal Rule of Evidence 201, to take judicial notice  
25 of the following documents, true and correct copies of which are attached for the  
26 Court's convenience.

27  
28 Exhibit A: Is a true and correct copy of the Bill Analysis for AB 2466.

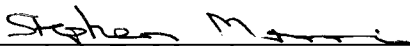
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Exhibit B: Is a true and correct copy of the Bill Analysis for SB 250 entitled  
Unfinished Business.

Exhibit C: Is a true and correct copy of the Bill Analysis for SB 250.

Date: May 20, 2009

Morris and Associates

  
Stephen B. Morris

# EXHIBIT A

SENATE JUDICIARY COMMITTEE	A
Charles M. Calderon, Chairman	B
1995-96 Regular Session	
	2
	4
	6
	6

AB 2466  
 Assemblymember Goldsmith  
 As amended on May 9, 1996  
 Hearing Date: June 11, 1996  
 Civil Code; Code of Civil Procedure  
 GEH:cb

expiration of gift certificates  
 escheat of unclaimed gift certificates

#### HISTORY

Source: Author

Related Pending Legislation: None known

Prior Vote: Assembly Floor: 69 - 0  
 Assembly Banking and Finance Committee: 13 - 0

#### KEY ISSUES

1. should retailers be prohibited from selling gift certificates which on their face state that they will not be honored after a certain date, and should retailers be required to honor gift certificates after the expiration date?
  - a. is REQUIRING redemption of expired gift certificates necessary to prevent windfalls to retailers and to satisfy the reasonable expectations of gift-givers?
  - b. should the bill be amended to flatly prohibit the placement of an expiration date on a gift certificate?
  - c. should the retroactive or prospective operation of this provision be expressly stated?

2. should unclaimed gift certificates be exempted from the escheat requirements of the unclaimed property law?

#### PURPOSE

The purpose of this bill is to prohibit retailers from selling gift certificates which state on their face that they will not be honored after a certain date, and to require retailers to honor gift certificates after the gift certificates have expired.

#### Expiration of Gift Certificates

Existing law regulates the issuance and redemption of trading stamps and premium coupons, but there is no regulation of the issuance and redemption of gift certificates.

This bill makes it unlawful to sell a gift certificate which contains an expiration date, unless the certificate clearly indicates that it may be redeemed in cash for its face value or reissued after the expiration date at no cost to the purchaser or recipient.

The bill also makes it unlawful for any person or entity who sells a gift certificate with an expiration date to refuse to redeem or replace the certificate.

The bill provides that a gift certificate sold without an expiration date is valid continuously except when refunded or replaced with a new gift certificate.

The bill does not apply to gift certificates that are distributed to a consumer for promotional purposes without any money or other thing of value being given in exchange for the gift certificate by the consumer.

#### Escheat of Gift Certificates

Existing law, the Unclaimed Property Law (Code of Civil Procedure ?1500 et seq) contains a number of provision requiring entities in possession of unclaimed property to turn over that property to the state, through the State Controller's office. Unclaimed property subject to such requirements is deemed to have been "escheated" to the state. The escheat is not permanent (?1501.5); the

AB 2466 (Goldsmith)  
Page 3

original owner of the property may file a claim to the Controller for its return (?1540).

Section 1520 provides that tangible personal property and certain types of intangible personal property held on behalf of another by a business escheats to the state if the property has remained unclaimed by the owner for more than three years. Gift certificates are not expressly mentioned in this section, but the Division of Unclaimed Property of the State Controller's Office reports that gift certificates valued at about \$200,000 to \$300,000 per year are escheated to the state under this provision.

This bill exempts gift certificates from the escheat provisions of Code of Civil Procedure ?1520.

#### COMMENT

#### 1. Requiring gift certificates to be honored after their expiration date

- a) Does the bill prevent windfalls to retailers and satisfy consumer expectations?

In 1994, approximately eighteen of the nation's retailers, including Stuards, KMart, Montgomery Ward, Tandy Corporation (Radio Shack), Mervyns, Robinsons/May Company, McDonalds, Denny's, the Wherehouse, Marshalls, Footlocker/Kenney Shoes, Vons and Ticketmaster, were sued in a class action lawsuit in San Diego Superior Court for violating California's Unfair Business Practices Act contained in Business and Professions Code Section 17200 for failing to honor gift certificates after expirations of varying lengths of time. This lawsuit was settled out of court in 1995 with the result that the above named retailers agreed to add language to their gift certificates stating that the certificates would be honored after any expiration. According to the author's office, this bill is an attempt to apply a unified law to all gift certificate issuers that were not subject to that settlement.

The author argues that gift certificates ought to retain all the characteristics of cash itself and remain valid in perpetuity, assuming the continued

AB 2466 (Goldsmith)  
Page 4

existence in business of the retailer who issued the gift certificate. Consumers Union supports the bill because it believes that:

Gift-givers do not expect their gifts to expire. The retailer has already received payment for the value of the certificate. Thus, expired gift certificates dash the

**Exhibit A**  
**page 3**

expectation of gift-givers and constitute an unfair windfall to retailers.

Notwithstanding the presence of no opposition to this bill, the proponents' arguments are not self-evident. Arguably, most purchasers of gift certificates and those who receive them, do in fact expect the certificates to expire. Assuming the expiration date is prominently displayed on the gift certificate, both the purchaser and the holder can read the expiration date, and should understand that the certificate must be redeemed by that date. Most consumers probably understand that commercial paper, like a personal check, is not precisely the same as cash, because it must be cashed or redeemed within a certain period of time.

A legal argument could be made that the retailer selling the gift certificate does not obtain an unjustified windfall if the certificate is unredeemed.

In legal terms, it could be argued that the purchaser of a gift certificate gives consideration to the retailer in exchange for receiving the retailer's promise to accept the certificate as the holder's payment for goods of a certain value, which is irrevocable for a specified period of time. It is the irrevocability of the promise for the specified time which is purchased; not the value of the goods for which the certificate may be redeemed. Consequently, once that period of irrevocability expires without the offer being accepted, the contractual obligation of the retailer is satisfied, and there is no windfall. (However, if certificates are interpreted to be irrevocable promises, they might be deemed to be options, which are securities which are regulated under securities laws).

Moreover, retailers are legally prevented from

AB 2466 (Goldsmith)

Page 5

obtaining a windfall, since the value of unclaimed gift certificates be paid to the State Controller after three years (see above). However, the fact that only 200,000 to 300,000 dollars' worth of certificates escheats to the Controller annually suggests that this requirements is honored more often in the breach.

- b) Should the bill be amended to flatly prohibit the placement of an expiration date on a gift certificate?

Under this bill, retailers would still be allowed to place expiration dates on gift certificates. If a retailer did place an expiration date on a gift

**Exhibit A**  
**page 4**

certificate, the certificate would also have to state that it may be redeemed in cash for its value, or replaced with a new gift certificate, at any time after the expiration date at no cost to the purchaser or holder.

The bill does not impose any requirement about the relative prominence or placement on the certificate of the expiration date versus the required disclaimer. Therefore, a retailer could create a certificate which, on the front, stated in large bold type that it expired in one year. The retailer could then place in very small type on the back of the gift certificate the required disclaimer about being able to redeem the certificate after the expiration date. The holder of such a certificate could very well be left with the impression that they could not redeem the certificate after the expiration date, which is contrary to the author's intent.

Amending the bill to address this problem by imposing requirements about relative prominence and placement of the different statements would be cumbersome, and burdensome. A better solution would seem to be to amend the bill to simply prohibit the placement of an expiration date on the certificate.

SHOULD THIS AMENDMENT BE MADE?

AB 2466 (Goldsmith)

Page 6

c) Retroactivity and prospectivity

The author's intent appears to be that the provisions of the bill apply retroactively; that is, as of January 1, 1997 (the effective date of the bill), retailers would have to honor any expired gift certificate issued prior to the effective date of the bill.

If this is the author's intent, an amendment may be necessary. Statutes are presumed to apply prospectively (i.e. they are presumed to not impair rights a party possessed when it acted, increase its liability for past conduct, or impose new duties with respect to transactions already completed), unless the Legislature clearly evinces its intent that the statute apply retroactively (See *Landgraf v. USI Film Products* (1994) 114 S.Ct. 1483).

**Exhibit A**  
**page 5**

should the bill be amended to expressly make this provision retroactive?

Although retroactive statutes pose due process concerns, courts generally uphold them against due process challenges, unless a separate argument can be made that the statute violates the constitutional prohibition against impairment of pre-existing contractual obligations (See Sweet, Annotation, Retroactive Application Of Federal Legislation As Violating Due Process Clause Of Federal Constitution's Fifth Amendment--Supreme Court Cases (1996) 107 L. Ed. 2d 1105).

Although retroactive application of this measure may be constitutional, the committee may wish to consider whether it is sound public policy. If, as argued above, consumers and retailers both reasonably expect gift certificates to expire after a specified time, then retroactive application of this bill would upset this reasonable expectation.

## 2. Exempting gift certificates from escheat requirements

There is no necessary connection between the provision in the bill prohibiting expiration of gift certificates, and the provision exempting gift certificates from the

AB 2466 (Goldsmith)  
Page 7

escheat requirements. Either of these provisions could stand without the other. The escheat was inserted in the bill in order to remove the opposition of the California Grocers Association.

The author argues that the state ought not to be collecting private moneys from retailers derived from three-year-old, unused gift certificates because those gift certificates may still be sitting at home in consumers' desk drawers and available to be redeemed.

Again, although there is no opposition to the bill, the proponents' arguments do not necessarily hold water. Perhaps the present three year time limit is too short a time period. However, at some point, it seems reasonable to assume that a gift certificate will not be redeemed, and that the holder has abandoned his or her claim to redemption of the certificate. Allowing retailers to retain the money received for this abandoned certificate appears to provide, as a matter of law, the exact type of windfall which proponents seek to avoid. This is especially the case if one accepts the proponents' arguments that gift certificates are just like cash and

are not merely a contract which expires at a specified time.

On the other hand, since this bill requires retailers to cash out or redeem a gift certificate whenever it is presented, it provides a more convenient method for holders to make their claim than does presenting a claim to the State Controller.

INSTEAD of exempting gift certificates from the escheat requirement, should the bill be amended to modify that requirement?

Support: Consumers Union

Opposition: None known

Prior Legislation: None known

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# EXHIBIT B

## BILL ANALYSIS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 651-1520 Fax: (916) 327-4478	SB 250
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## UNFINISHED BUSINESS

Bill No: SB 250  
Author: Corbett (D), et al  
Amended: 8/30/07  
Vote: 21

SENATE JUDICIARY COMMITTEE : 3-2, 3/27/07  
AYES: Corbett, Kuehl, Steinberg  
NOES: Harman, Ackerman

SENATE FLOOR : 24-15, 4/26/07  
AYES: Aanestad, Alquist, Cedillo, Corbett, Correa,  
Ducheny, Florez, Kehoe, Kuehl, Lowenthal, Machado,  
Maldonado, Migden, Oropeza, Padilla, Perata,  
Ridley-Thomas, Romero, Scott, Simitian, Steinberg,  
Torlakson, Vincent, Wiggins  
NOES: Ackerman, Ashburn, Calderon, Cogdill, Cox, Denham,  
Dutton, Harman, Hollingsworth, Margett, McClintock,  
Negrete McLeod, Runner, Wyland, Yee  
NO VOTE RECORDED: Battin

ASSEMBLY FLOOR : 52-23, 9/6/07 - See last page for vote

SUBJECT : Gift Cards and Certificates

SOURCE : Author

DIGEST : This bill allows any gift card, as defined, with  
a cash value of less than \$10 to be redeemed in cash for  
its cash value. This bill deletes from current law  
governing gift cards the exemption for food product gift

CONTINUED

SB 250

**Exhibit B**  
**page 1**

Page

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2

cards or certificates.

Assembly amendments (1) reduces from \$20 to \$10 the cash value, (2) provides that the bill provisions do not apply to gift certificates that are issued for perishable food products, (3) defines "cash" out, excludes from existing prohibition, donated gift certificates, (4) adds co-authors, and (5) gives consumers the option to apply balance to a subscriber wireless telecommunication account.

ANALYSIS : Existing law provides that "gift certificate" includes gift cards, but does not include any gift card usable with multiple sellers of goods or services, provided that the expiration date, if any, is printed on the card. This exemption does not apply to a gift card usable only with affiliated sellers of goods or services.

Existing law provides the following:

- 1.It is unlawful for any person or entity to sell a gift certificate that contains an expiration date or a service fee, including, but not limited to a service fee for dormancy, except as specified.
- 2.Any gift certificate sold after January 1, 1997, is redeemable in cash for its cash value, or subject to replacement with a new gift certificate at no cost to the purchaser or holder.
- 3.A gift certificate sold without an expiration date is valid until redeemed or replaced.

Existing law provides that the above provisions do not apply to the following gift certificates issued on or after January 1, 1998, if the expiration date appears in capital letters in at least 10-point font on the gift certificate:

- 1.Gift certificates issued to a consumer for an awards, loyalty, or promotional program without the consumer exchanging money or other thing of value for the gift certificates.
- 2.Gift certificates sold below face value at a volume discount to employers or nonprofit and charitable

SB 250  
Page

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3

organizations for fundraising purposes if the expiration date is not more than 30 days after the date of sale.

**Exhibit B**  
**page 2**

3. Gift certificates issued for a food product perishable food products.

Existing law provides that a dormancy fee may be charged on a gift card, if all of the following criteria are met:

1. The remaining value of the card is five dollars or less each time the fee is assessed.
2. The fee does not exceed one dollar per month.
3. There has been no activity on the card for 24 consecutive months.
4. The holder may reload or add value to the card,
5. A statement is printed on the card in at least 10-point font stating the fee amount, how often the fee will occur, that the fee is triggered by card inactivity, and at what point the fee will be charged.

Existing law provides that any waiver of the provisions relating to gift certificates is contrary to public policy, and is void and unenforceable.

This bill allows any gift certificate (gift card) with a cash value of less than \$10 to be redeemed in cash for its cash value and deletes the current exemption for food product gift certificates.

The bill includes gift certificates that are donated among those that existing law makes exceptions for.

This bill provides that "cash" includes, but is not limited to, currency or check. If accepted by both parties an electronic funds transfer or an application of the balance to a subscriber's wireless telecommunication account is permissible.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No  
Local: No

SB 250  
Page

4

SUPPORT : (Verified 9/7/07)

California Public Interest Research Group  
Congress of California Seniors  
Consumer Action  
Consumer Attorneys of California

**Exhibit B**  
**page 3**

Consumers Union  
Consumer Federation of California

OPPOSITION : (Verified 9/6/07)

California Restaurant Association  
CTIA - The Wireless Association  
Direct Marketing Association  
National Association of Theaters Owners California/Nevada

ARGUMENTS IN SUPPORT : According to the author's office, consumers with small values on their gift cards often cannot buy anything in the store with the remaining value on the card, and they cannot get change for the value. This often leads to the consumer not spending the small remaining value left on the gift card. This problem is so common that in 2006, \$8.2 billion in gift cards went unspent in the United States.

In addition, there is an overly broad exemption for all "food products." Originally, this exemption was intended for only gift certificates whose value was a named perishable food product such as a turkey. However, the wording makes it unclear which retail establishments are covered under this exemption.

ARGUMENTS IN OPPOSITION : The California Restaurant Association (CRA) argues that this bill increases the likelihood of fraud. The ability to redeem gift card of less than \$10 for cash effectively gives dollar for dollar cash value to gift cards. The ability to do so creates concern regarding the potential unintended consequences of fraud and susceptibility to theft this bill may have. Many gift certificates can be purchased online today. Any unscrupulous individual with a stole credit card can easily translate the credit into cash by purchasing a gift certificate of less than \$10 and simply redeem it for cash.

SB 250  
Page

5

The cash equivalency of those cards, would allow for another mechanism for criminals to circumvent fraud protections built into credit cards, give them easy access to cash. Gift card, particularly those issued by Visa, MasterCard and American Express (AXP) are already highly attractive fraud target. These and other gift cards are highly susceptible to theft and fraud. It is common for thieves to unscrupulously alter the magstripes of these gift cards by loading them with stolen account data, and using them as cash. An example of this fraud was the recent data hacking of retail giant TJX where forgers embedded the stolen data onto the magstripes of expertly

**Exhibit B**  
**page 4**

counterfeited credit card. Giving all gift cards independent cash value would further encourage unscrupulous thieves to fraudulently manipulate these cards especially if they know that cash redemption is easily accessible and guaranteed.

Of less than \$10, many gift certificates sold by restaurants are purchased by a credit or debit card. A restaurant will also incur fees with the credit card association when the transaction occurs. Also, many small, independent restaurants contract out with third party vendors to handle the preparation, tracking, and redemption of gift cards or gift certificates from their restaurant that includes a per certificate or card issuance fee.

Restaurants are willing to incur these upfront costs of the transaction knowing that it will result in future revenue.

Quick service restaurants, including fast food operations that are both chains and independents, overage gift certificates amounts of approximately five dollars. Under this scenario, a restaurant could issue a gift card of less than \$10, incur the fees associated with the issuance of the card as described above, and then be forced to pay the full amount upon redemption, despite the loss of the fees incurred upfront on the transaction. By allowing individuals to redeem gift certificates for cash value under \$10, the restaurant would lose money on gift certificate transactions purchased by credit card at \$10 or under.

ASSEMBLY FLOOR :

AYES: Aghazarian, Arambula, Bass, Beall, Benoit, Berg, Berryhill, Blakeslee, Brownley, Caballero, Charles

SB 250  
Page

6

Calderon, Carter, Coto, Davis, De La Torre, De Leon, DeSaulnier, Dymally, Eng, Evans, Feuer, Fuller, Garcia, Garrick, Hancock, Hayashi, Hernandez, Huffman, Jones, Karnette, Keene, Krekorian, Laird, Leno, Levine, Lieber, Lieu, Ma, Mendoza, Mullin, Nava, Portantino, Price, Ruskin, Salas, Saldana, Solorio, Soto, Swanson, Torrico, Wolk, Nunez

NOES: Adams, Anderson, Cook, DeVore, Duvall, Gaines, Horton, Houston, Huff, Jeffries, La Malfa, Maze, Nakanishi, Niello, Parra, Plescia, Sharon Runner, Silva, Smyth, Spitzer, Tran, Villines, Walters

NO VOTE RECORDED: Emmerson, Fuentes, Galgiani, Strickland, Vacancy

RJG:do 9/7/07 Senate Floor Analyses

**Exhibit B**  
**page 5**

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

# EXHIBIT C

## BILL ANALYSIS

SENATE JUDICIARY COMMITTEE  
Senator Ellen M. Corbett, Chair  
2007-2008 Regular Session

SB 250	S
Senator Corbett	B
As Amended March 22, 2007	
Hearing Date: March 27, 2007	2
Civil Code	5
ADM:rm	0

SUBJECT

Gift Cards and Certificates

DESCRIPTION

This bill would allow any gift card, as defined, with a cash value of less than \$20 to be redeemed in cash for its cash value.

This bill would delete from current law governing gift cards the exemption for food product gift cards or certificates.

(This analysis reflects author's amendments to be offered in committee.)

BACKGROUND

Over the last few years, gift cards have become increasingly popular as a means of gift-giving. Deloitte & Touche's 21st Anniversary Holiday Survey of retail spending and trends in 2006, found that gift cards have become the No. 1 gift choice, with nearly 80% of those surveyed saying they planned to buy at least one gift card during the holiday season. According to the National Retail Federation, an industry trade association, gift cards were expected to account for 15-20% of holiday gift sales in 2006.

A retail trade organization estimated that gift card sales amounted to \$82 billion in 2006, with 10% -- \$8.2 billion

(more)

SB 250 (Corbett)  
Page 2

**Exhibit C**  
**page 1**

-- of that lost to consumers due to unredeemed value on the cards, or expiration or loss of the gift card. This means that, in 2006, approximately \$8.2 billion nationwide was retained by retailers. This bill seeks to give California consumers the full value of their gift cards by allowing consumers to redeem for cash gift cards with a cash value of less than \$20.

Current law defines "gift certificate" to include gift cards, except as specified.

#### CHANGES TO EXISTING LAW

Existing law provides that "gift certificate" includes gift cards, but does not include any gift card usable with multiple sellers of goods or services, provided that the expiration date, if any, is printed on the card. This exemption does not apply to a gift card usable only with affiliated sellers of goods or services. [Civil Code (CC) Section 1749.45.]

Existing law provides the following:

it is unlawful for any person or entity to sell a gift certificate that contains an expiration date or a service fee, including, but not limited to a service fee for dormancy, except as specified;

any gift certificate sold after January 1, 1997, is redeemable in cash for its cash value, or subject to replacement with a new gift certificate at no cost to the purchaser or holder; and

a gift certificate sold without an expiration date is valid until redeemed or replaced. [CC Section 1749.5(a) - (c).]

Existing law provides that the above provisions do not apply to the following gift certificates issued on or after January 1, 1998, if the expiration date appears in capital letters in at least 10-point font on the gift certificate:

gift certificates issued to a consumer for an awards, loyalty, or promotional program without the consumer exchanging money or other thing of value for the gift certificates;

gift certificates sold below face value at a volume discount to employers or nonprofit and charitable

organizations for fundraising purposes if the expiration date is not more than 30 days after the date of sale; and gift certificates issued for a food product. [CC Section

1749.5(d).]

Existing law provides that a dormancy fee may be charged on a gift card, if all of the following criteria are met: the remaining value of the card is \$5 or less each time the fee is assessed; the fee does not exceed \$1 per month; there has been no activity on the card for 24 consecutive months; the holder may reload or add value to the card; and a statement is printed on the card in at least 10-point font stating the fee amount, how often the fee will occur, that the fee is triggered by card inactivity, and at what point the fee will be charged. [CC Section 1749.5(e).]

Existing law provides that any waiver of the provisions relating to gift certificates is contrary to public policy, and is void and unenforceable. [CC Section 1749.51.]

This bill would allow any gift certificate (gift card) with a cash value of less than \$20 to be redeemed in cash for its cash value.

This bill would delete the current exemption for food product gift certificates.

COMMENT

1. Stated need for the bill

The author writes:

Consumers with small values on their gift cards often cannot buy anything in the store with the remaining value on the card, and they cannot get change for the value. This often leads to the consumer not spending the small remaining value left on the gift card. This problem is so common that in 2006, \$8.2 billion in gift cards went unspent in the United States.

SB 250 (Corbett)  
Page 4

In addition, there is an overly broad exemption for all "food products." Originally, this exemption was intended for only gift certificates whose value was a named perishable food product such as a turkey. However, the wording makes it unclear which retail establishments are covered under this exemption.

2. This bill would give consumers the full value of gift

cards with less than \$20 on them, and prevent windfall profits to businesses

This bill would allow any gift card with a cash value of less than \$20 to be redeemed in cash for its cash value. The author and supporters note that often a consumer finds him or herself with a gift card with a small amount of money remaining on the card, the retailer refuses to redeem the remaining value of the card for cash, and the consumer ends up forfeiting the remaining value of the card, unless he or she makes an unnecessary purchase which would likely involve additional out-of-pocket costs for the consumer. The author argues that consumers should be relieved from this Hobson's choice. Another scenario posited by the author and supporters is when a consumer receives a gift card that he or she cannot use because they do not have the requisite equipment or product to go with the card, do not have ready access to a particular retailer, or do not shop at a particular retailer.

In the above scenarios, the consumer loses the remaining value of the card, which remains in the hands of the business, and thus amounts to a windfall profit for the business. This bill would rectify that where a gift card has a remaining value of less than \$20.

3. Opponent's arguments

Opponent CA Grocers Association (CGA) makes four arguments in opposition to the bill:

First, CGA argues that the "food product" exemption under current law should remain in effect, as opposed to being deleted as SB 250 would do. CGA argues that the exemption was put into place to allow retailers to close

SB 250 (Corbett)  
Page 5

the books on seasonal promotion transactions, such as when an employer buys holiday turkey gift certificates for employees. The author states that, while she believes the current exemption for food products is overly broad -- it could be interpreted to mean any food product whether perishable or not -- she would consider proposed amendments to exempt named perishable food products.

Second, CGA is opposed to the less than \$20 threshold for cash redemption. CGA argues that this requirement would "substantially complicate the retailer's accounting procedures, as the retailer would be forced to anticipate

redeeming the certificate for cash as opposed to products or services," and "they will be forced to bear the cost of providing, programming, and accounting for the gift certificate without any net gain." The author responds that this is a red herring. When a consumer has paid full value for a gift card, the retailer should be prepared to give the customer the full value of the card, whether in cash, product, or services. And, under current law, "any gift certificate [gift card] sold after January 1, 1997, is redeemable in cash for its cash value, or subject to replacement with a new gift certificate at no cost to the purchaser or holder." Thus, retailers should already be anticipating that a consumer may seek to redeem a gift card for cash, and should have their accounting systems prepared for such eventuality.

Third, CGA argues that some stores provide customers with a gift certificate when they return an item without a receipt, and often these are redeemable for store credit only because the store cannot verify the price paid for the item. CGA further argues that, if stores are forced to redeem gift cards for cash, stores will likely discontinue store credits and deny returns without a receipt. CGA has said that its primary concern with merchandise returned without a receipt is related not to individual consumers, but to so-called "organized retail crime" groups where organized theft rings hit retailers, and then resell the stolen merchandise online, at flea/swap markets, fence-owned convenience stores, or small local stores.

SB 250 (Corbett)  
Page 6

The author responds that this appears to be more a criminal law enforcement issue, and/or an issue of what policies a store decides to adopt, i.e., with respect to returns, whether to request identification for certain items, or to place certain targeted items in a locked case or behind the cash register. Additionally, a retailer could provide a customer with something other than a gift certificate, including a cash register receipt or paper entitled "store return credit," to document a return.

Finally, CGA argues that some retailers mail promotional gift certificates to consumers at no cost and, because this bill would allow consumers to redeem for cash gift cards with a value of less than \$20, retailers would discontinue promotional gift certificates. The author responds that this argument is nonsensical because, under current law [CC Section 1749.5(d)], promotional gift

certificates are exempted from California's gift certificates statutes, and this bill would not alter that exemption.

4. Author's amendments

On page 2, line 9, delete:

"or subdivision (e) "

Support: Consumers Union; CA Public Interest Research Group; Consumer Attorneys of CA; Consumer Action

Opposition: CA Grocers Assoc.

HISTORY

Source: Author

Related Pending Legislation: None Known

Prior State Legislation: AB 175 (Calderon of 2005) would have enacted the Gift Cards Usable with Multiple Sellers of Goods or Services Disclosure Act, which would have required that a gift card usable with multiple sellers clearly and conspicuously

SB 250 (Corbett)  
Page 7

disclose its purchase price, any dormancy or regularly recurring maintenance or service fee, and the fee to obtain any remaining value on the card. The bill would have exempted from the above requirements any card distributed for free, as specified, and prepaid calling cards. (This bill was withdrawn by the author from hearing in this committee.)

AB 656 (Corbett, Chapter 319, Statutes of 2004) revised and recast the provisions applicable to gift certificate refunds when a gift certificate recipient does not redeem the gift certificate within a specified time.

AB 2090 (Liu of 2004) would have deleted the dormancy provisions of CC Section 1749.5, and would have thereby prohibited dormancy fees on gift certificates. (This bill was never heard in a policy committee.)

AB 1092 (Harman, Chapter 116, Statutes of 2003), among other things: generally prohibited the sale of gift certificates that contain services fees; allowed dormancy fees under specified circumstances; and defined "gift certificate" to include "gift card."

Prior Federal Legislation: S. 2969 (Fair Gift Card Act of 2004) would have made it unlawful for any person to impose a dormancy fee, inactivity charge or fee, or a service fee on a gift certificate, store gift card, or general-use prepaid card. Certain exemptions and penalty violations would have applied. (This bill was referred to the Committee on Banking, Housing, and Urban Affairs; it did not move out of that committee.)

H.R. 85 (Gift Card Protection Act of

SB 250 (Corbett)  
Page 8

2005) would have required the Fair Trade Commission to promulgate a rule providing that it would be an unfair or deceptive act or practice for gift certificates to have an expiration date, service charges, or dormancy fees. (This bill was referred to the Subcommittee on Commerce, Trade and Consumer Protection; it did move out of that committee.)

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